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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 706

C. FRANK SMITH,
Petitioner,

vs.

STATE OF TENNESSEE,
Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

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Petitioner, C. Frank Smith, supplements his petition heretofore filed to refer to and bring to the Court's attention the appliçability of a recent decision of this Court in *Chapman* v. *California*, decided February 20, 1967, 17 L. ed. 705, in which this Court considered the "harmless error" rule in a way that should dispose of the instant case favorably to the Petitioner.

Reference is especially made to the language of the opinion by Mr. Justice Black in section III of the opinion (17 L. ed. at p. 710) wherein he refers to the mischievous results of persuasive but forbidden evidence. Since the

right to a trial by jury is a constitutional right, any probative evidence on a disputed and material issue "might have contributed to the conviction."

The Tennessee Supreme Court did not even weigh the other evidence in the case beyond saying that "there is sufficient and convincing evidence in the record of the guilt of defendant." See Appendix p. A6.

This is not the test required by the Chapman case. The effect of this is to take away from the jury the decision of the evidence, for it could well have been that without the purported evidence of forgery the jury might have believed the testimony of the Defendant that the instrument was not and was not to his knowledge at the time a forgery.

Wherefore Petitioner renews the prayer for relief as in his original petition set forth.

Respectfully submitted,

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